No. 92-780

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

NATIONAL ORGANIZATION FOR WOMEN, INC., *et al.*,
Petitioners,
v.
JOSEPH SCHEIDLER, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE AMERICAN MEDICAL ASSOCIATION AND AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS NATIONAL ORGANIZATION FOR WOMEN, *ET AL.*

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QUESTION PRESENTED

Whether a violation of 18 U.S.C. § 1962(c) requires proof that either the enterprise or the predicate acts of racketeering activity are economically motivated.

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The American Medical Association and the American College of Obstetricians and Gynecologists respectfully submit this brief as *amici curiae* in support of petitioners. The written consent of all parties has been obtained and filed with the Clerk in accordance with Supreme Court Rule 37.3.

INTEREST OF AMICI CURIAE

Amicus American Medical Association ("AMA") is a private, voluntary, non-profit organization of physicians. Founded in 1846, its purpose is to promote the science and art of medicine and to improve the public health. The

AMA's 280,000 members include practitioners in all areas of medicine, medical research, and medical education.

Amicus American College of Obstetricians and Gynecologists ("ACOG") is a private, voluntary, non-profit organization of physicians who specialize in obstetric and gynecologic care. ACOG is the leading group of professionals providing health care to women. Its over 33,000 members represent approximately 90 percent of all obstetricians and gynecologists practicing in the United States.

This case involves alleged systematic attempts to use criminal activity as a means of preventing medical practitioners from carrying on their professional work. *Amici* and their members have a vital interest in ensuring that physicians and the facilities in which they practice are adequately protected from the disruptions caused by concerted criminal activities. Such protection is necessary not only to guard the lives and livelihoods of physicians themselves but, most importantly, to ensure the health and safety of patients, to preserve their unimpeded access to lawful and proper medical care, and to advance the public interest in medical research.

Increasingly, medical practitioners, medical researchers and medical facilities across the nation have become targets of criminal attacks by individuals and organizations who wish to halt or impede their work. The instant case involves one frequent target of such illegal acts—clinics that perform abortions or provide reproductive counseling. Although abortion is clearly a subject of intense societal debate, these clinics and the physicians associated with them have too often been the subject of lawless conduct that goes far beyond mere speech. Such conduct has included actual and attempted murders, kidnappings, bombings, arsons and extortion.[1] Earlier this

[1] *See, e.g., United States* v. *Anderson*, 716 F.2d 446 (7th Cir. 1983) (clinic physician and his wife kidnapped from home at gun-

year, for example, physician David Gunn was murdered outside a Pensacola, Florida abortion clinic after protesters distributed "wanted" posters with his name and picture on them.[2]

But the problem is by no means limited to the abortion context. Organized illegal attacks on medical practice and especially on medical research arise from an expanding list of sources. In recent years, vigilantes have firebombed medical laboratories and set fire to medical research facilities as well as women's health clinics. Physicians, nurses and other health practitioners have received death threats and been the subject of direct attacks.

These activities have been carried out by extremist groups acting under the banners of such causes as animal rights, environmentalism, antibiotechnology and antimilitarism.[3] The tragic costs of this criminal conduct include, of course, the pecuniary and personal losses suffered by the immediate victims. In addition, however, these acts take a serious toll on the progress of medicine in this country and the consequent wellbeing of our citizens.

Organized illegal conduct of this sort poses distinct law enforcement problems and requires distinctive remedies. It is not enough to pursue each individual wrongdoer. Rather, it is essential to have a remedy against any organization through which these types of activities are

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point, held captive for eight days, and threatened with execution unless he ceased performing abortions).

[2] S. Stein, "Abortion Doctors Under Siege; Protestors Decry Killing; Defend Focus on Physicians," *Chicago Tribune* (March 12, 1993), at 1.

[3] *See, e.g.*, A. Trafford, "The Rise of Medical Vigilantes," *Washington Post* (Sept. 8, 1987), at Z15; M. Specter, "Animal Research Labs Increasingly Besieged; Violence, Threats From Activists Force Institutions to Tighten Security," *Washington Post* (May 30, 1989), at A1; J. Adams, "After Second Bombing, FBI Warns Academics," *Chicago Tribune* (June 25, 1993), at 2.

conducted. The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), provides such a remedy.

Amici fully support the right of individuals and organizations to make known their views on matters of public importance. *Amici* submit, however, that criminal attacks against health practitioners and researchers—even when motivated by an ideological commitment—are readily distinguishable from legitimate forms of political expression. Such criminal actions should be subject to the full panoply of legal remedies. To support the availability of RICO remedies against those who engage in such actions, *amici* submit this brief in support of petitioners.

STATEMENT OF THE CASE

Petitioners are two health clinics that provide abortion services and a national non-profit organization aimed at advancing and protecting women's rights. The relevant respondents (the "PLAN defendants") are several individuals and organizations who are active in an anti-abortion coalition named Pro-Life Action Network ("PLAN"). J.A. 48-55.[4]

1. Petitioners filed this action in the United States District Court for the Northern District of Illinois, alleging violations of several sections of RICO—specifically Sections 1962(a), (c) and (d)—and of the Sherman Act, 15 U.S.C. § 1 *et seq.* 968 F.2d at 614. Petitioners also pleaded pendent state law claims. During the course of proceedings in the district court, petitioners' initial complaint was amended twice and was supplemented by a "RICO Case Statement" which further detailed their RICO allegations. J.A. 39-80, 87-117.

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[4] The following citation forms are used in this brief: "J.A." refers to the Joint Appendix filed with the Court; "968 F.2d" refers to the opinion of the court of appeals; and "765 F. Supp." refers to the opinion of the district court.

As amended and supplemented, the complaint alleged that respondents had engaged and were engaging in a conspiracy to close health clinics providing abortions through a pattern of illegal activity, including the extortionate use of force and threatened force against physicians, other health care personnel, and patients. J.A. 65-74. In particular, petitioners alleged that between 1980 and 1990 the PLAN defendants and their co-conspirators had engaged in a wave of criminal activity directed against such clinics. This activity included, *inter alia*, firebombings; numerous other acts of arson and attempted arson; direct threats of personal harm to clinic personnel and patients, as well as threats against the clinics' landlords, laboratories and suppliers; assaults and batteries upon clinic staff and personnel; ransacking of clinics with accompanying criminal destruction of property; and home and business invasions (including in one case, the invasion of a judge's home). J.A. 91, 118-97. These activities and others were alleged to be for the purpose of driving clinics performing abortions out of business. J.A. 39.

Count three of petitioners' complaint is the only count currently at issue before this Court. Count three characterizes these alleged illegal activities as violations of 18 U.S.C. § 1962(c) and, because this violation was alleged to be the result of a conspiracy, also of Section 1962(d). Specifically, petitioners alleged that PLAN is an associational "enterprise" under RICO. Petitioners further alleged that PLAN's affairs had been conducted by the PLAN defendants through a pattern of unlawful predicate illegal acts that caused substantial injury to petitioners' business and property. J.A. 72-73.

2. The district court granted respondents' motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. With respect to count three, the court relied on a line of cases following the Second Circuit's opinion in *United States* v. *Ivic*, 700

F.2d 51 (2d Cir. 1983). It held "that an economic motive requirement exists to the extent that some profit-generating purpose must be alleged in order to state a RICO claim" under Section 1962(c). 765 F. Supp. at 943. The district court found that the allegations of count three failed to satisfy this "economic motive requirement" because "the primary objective of the alleged enterprise and its pattern of predicate acts was to drive clinics that perform abortions out of business"—"not to obtain money." [5] *Id.* at 944.

3. The court of appeals affirmed. Like the district court, the court of appeals relied upon *United States* v. *Ivic*, 700 F.2d 51 (2d Cir. 1983). It held that a RICO violation requires "that either the predicate acts or the enterprise be geared toward economic gain." 968 F.2d at 628. Although the court of appeals did not "contest that the defendants' activities had an economic effect on the plaintiffs," or that their "reprehensible criminal" conduct was designed to raise the clinics' costs and drive them out of business, the court refused "to equate that effect with the economic motive required by *Ivic* and its progeny." *Id.* at 630. The court accordingly found that petitioners had not "satisfied the economic motive requirement of § 1962(c)," because "the aim of the extortion is to close women's health centers," and held that count three had appropriately been dismissed. *Id.* at 630.

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[5] The district court also rejected petitioners' argument that even if some "economic motive" were required, it was present because the PLAN defendants' unlawful activities were in part designed to elicit increased donations and financial support. "If this were the case, a plaintiff in a RICO action could meet the economic motive requirement simply by alleging . . . that the defendant was motivated by the possibility of gaining financially from the voluntary contributions of those sympathizers during the course of the activities. This result is nonsensical, and the court refuses to adopt it." 765 F. Supp. at 944.

SUMMARY OF ARGUMENT

The court of appeals erred in holding that Section 1962(c) of RICO requires proof of "economic motivation" in order to establish a violation. Section 1962(c) contains four specific elements. *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 496-97 (1985). None of these elements, explicitly or implicitly, requires proof of economic motivation. Accordingly, an organization that systematically engages in illegal acts of vigilantism designed to interfere with the provision of medical care or the advancement of medical science is subject to liability under Section 1962(c)—regardless of whether the organization has a profit-seeking purpose.

First, a RICO "enterprise" need not be motivated by a desire for economic gain. Quite to the contrary, the statutory definition of a RICO enterprise encompasses "any" organization, individual, or group of individuals associated in fact. 18 U.S.C. § 1961(4). This definition manifests a clear intent to reach broadly and does not support any implicit limitations. *Russello* v. *United States,* 464 U.S. 16, 21 (1983). Certainly, there is no warrant in the language of the statute for engrafting an economic motivation requirement onto the carefully crafted, expansive definition of a RICO enterprise.

Second, RICO does not require that a defendant's "racketering activity" be economically motivated. RICO defines racketerring as any act or threat that is unlawful under certain state or federal criminal laws. 18 U.S.C. § 1961(1). There is no additional requirement that the predicate acts of racketeering be driven by a profit-seeking purpose. Indeed, several of the crimes specified in Section 1961(1)—such as murder, kidnapping and arson—do not require an intent to profit financially. The court of appeals' adoption of the economic motivation requirement is precisely the sort of creative RICO-limiting interpretation not intended by Congress that this Court con-

sistently has rejected. *See, e.g., H.J., Inc.* v. *Northwestern Bell Telephone Co.,* 492 U.S. 229 (1989); *Sedima, S.P.R.L.* v. *Imrex Co.,* 473 U.S. 479 (1985).

Third, although not necessary to the proper interpretation of the statute, the legislative history of RICO does not support the imposition of an economic motivation requirement. This history confirms the plain meaning of the statute that Congress intended RICO "to encompass a wide range of criminal activity, taking many different forms and likely to attract a broad array of perpetrators operating in many different ways." *H.J.,* 492 U.S. at 248-49. Congress was concerned with the effects of organized criminal acts on victims—not with whether those acts were committed in pursuit of money, political power or some ideological cause. Criminal acts of violence should not be confused with legitimate forms of political expression. *See Wisconsin* v. *Mitchell,* 113 S. Ct. 2194, 2199 (1993).

Organized, violent attacks against medical professionals and researchers are a growing problem in our society for which the strongest legal remedies are necessary. RICO provides useful and appropriate remedies to address this problem.

ARGUMENT

THERE IS NO REQUIREMENT IN 18 U.S.C. § 1962(c) THAT EITHER THE ENTERPRISE OR ANY OF THE ACTS OF RACKETEERING MUST BE ECONOMICALLY MOTIVATED.

The court of appeals stated that its interpretation of Section 1962(c) as requiring an economic motive "is dictated by the terms of the statute." 968 F.2d at 629. *Amici* agree that the statutory language is and should be decisive in this case.[6] The language of a statute is "the most reliable evidence of its intent." *United States* v. *Turkette*, 452 U.S. 576, 593 (1981). Thus, "[t]he starting point in interpreting a statute is its language, for '[i]f the intent of Congress is clear, that is the end of the matter.'" *Good Samaritan Hospital* v. *Shalala*, —— U.S. ——, 113 S. Ct. 2151, 2157 (1993) (quoting *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984)). *See Estate of Cowart* v. *Nicklos Drilling*, —— U.S. ——, 112 S. Ct. 2589, 2594 (1992).

Contrary to the statement of the court of appeals, the language of the statute directly contradicts its interpretation. This Court has previously recognized that Section 1962(c) presents four—and only four—elements for proof of a violation. "A violation of § 1962(c) . . . requires (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity . . . . *But the statute requires no more than this.*" *Sedima*, 473 U.S. at 496-97 (emphasis supplied). Concomitantly, this Court has consistently rejected attempts to introduce into RICO additional re-

[6] Section 1962(c) provides in its entirety as follows: "It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c).

quirements that lack any firm grounding in the statutory text. *See, e.g., id.* at 495 (rejecting "racketeering injury" requirement); *H.J., Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 249 (1989) (rejecting "organized crime" requirement).

"Economic motivation" does not appear as a separate statutory requirement in Section 1962(c). Such a requirement can legitimately be said to exist, therefore, only if it inheres within one or more of the four express elements of a Section 1962(c) violation. Recognizing this principle, the court of appeals claimed to discover its "economic motivation" requirement within the parameters of two other express statutory elements: (1) a RICO "enterprise," and (2) "racketeering activity." But neither of these statutory terms provides a legitimate vehicle for the RICO limitation that respondents seek to import. To the contrary, a requirement of "economic motivation" is entirely foreign to the relevant statutory provisions.

A. A RICO "Enterprise" Does Not Require Economic Motivation.

1. The term "enterprise" is not left undefined or ambiguous in RICO. The statute explicitly defines this term as including "*any* individual, partnership, corporation, association, or other legal entity; and *any* union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (emphasis supplied). As this Court has observed, the statutory definition is expansive. *Russello* v. *United States*, 464 U.S. 16, 21 (1983); *United States* v. *Turkette*, 452 U.S. 576, 580-81, 587, 593 (1981); *Sedima*, 473 U.S. at 497-98 ("RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach but also of its express admonition that RICO is to 'be liberally construed to effectuate its remedial purposes' ") (citation omitted).

The breadth of this statutory definition is most apparent in its use of the word "any." As this Court has noted, "[t]here is no restriction upon the associations embraced by the definition," *Turkette*, 452 U.S. at 580, and also no uncertainty in the meaning of the term. *Id.* at 581. " '[A]ny' encompasses 'all.' " *Mobil Oil Exploration & Producing Southeast, Inc.* v. *United Distribution Cos.*, 498 U.S. 211, 223 (1991). In short, *any* legal entity or *any* association in fact can constitute an "enterprise" within the meaning of the Act.

2. Despite the apparent breadth of the statutory definition of "enterprise," the Second Circuit in *United States* v. *Ivic*, 700 F.2d 51, 60 (2d Cir. 1983), limited the application of this term to "profit-seeking ventures." Specifically, the court concluded in *Ivic* that "the term 'enterprise' . . . refers to the sort of entity in which funds can be invested and a property interest of some sort acquired, and hence the sort of entity which one joins to make money. Although perhaps somewhat wider in its reach than 'business,' an 'enterprise' . . . is evidently *an organized profit-seeking venture.*" *Id.* (emphasis supplied). The court below embraced this conclusion. It held that the term enterprise "conveys a restriction to economic entities." 968 F.2d at 628. It purported to find further support in this Court's occasional references to "businesses" when speaking about the enterprise concept.[7] 968 F.2d at 629.

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[7] The sole such reference cited by the court of appeals—contained within an excerpt from *H.J.*, 492 U.S. at 249—simply lacks the significance the court of appeals seeks to ascribe to it. The relevant portion of *H.J.* merely recapitulated the holding in *Sedima* that RICO was not intended to be limited only to mobsters but applies equally to "legitimate business" engaged in repeated criminal activity. A holding that RICO can be applied to "legitimate business" is hardly the same, however, as a holding that RICO applies *only* to businesses. Moreover, if Congress had intended that the term "enterprise" apply only to businesses, it could have inserted that single word, which it in fact used elsewhere in the statute. *See,*

This interpretation is squarely at odds with the statutory definition, which contains no restriction to "profit-seeking ventures." Moreover, no portion of the definitional language is susceptible to such an interpretive gloss. For example, the statute includes any "individual" as a qualifying enterprise—and individuals are not generally thought of as "profit-seeking ventures." *See McCullough* v. *Suter*, 757 F.2d 142 (7th Cir. 1985). Moreover, Section 1961(4)'s inclusion of "any legal entity" quite clearly encompasses such organizations as non-profit corporations or governmental institutions—neither of which have profits as their purpose. Indeed, the lower courts, including the Seventh Circuit, have consistently recognized that such entities qualify as RICO enterprises.[8] *See, e.g., United States* v. *Murphy*, 768 F.2d 1518, 1531 (7th Cir. 1985), *cert. denied*, 475 U.S. 1012 (1986); *United States* v. *Angelilli*, 660 F.2d 23, 30-35 (2d Cir. 1981), *cert. denied*, 455 U.S. 910 (1982); *Averbach* v. *Rival Manufacturing Co.*, 809 F.2d 1016, 1018 (3d Cir.), *cert. denied*, 482 U.S. 915 (1987).

Nor does the statutory definition provide any greater warrant for imposing a "profit-seeking" requirement upon associational enterprises. *See Turkette*, 452 U.S. at 582 n.4. To be sure, an associational enterprise must be comprised of "a group of persons associated together for a

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e.g., § 1964(c) ("any person injured in his business or property"); § 1968(d) ("principal office or place of business"), f(2), (g) ("transacts business"). The fact that Congress did not do so, however, significantly undermines the reasoning of the court below. *See Turkette*, 452 U.S. at 581.

[8] The incongruity of requiring that a RICO enterprise must have profits as its purpose is even more apparent when it is understood that under RICO the enterprise is frequently *the victim* or passive tool of wrongdoers. *See Haroco* v. *American National Bank & Trust Co. of Chicago*, 747 F.2d 384, 401 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1985). Why the *victim*'s purposes or motivations should be at all relevant in determining the existence of a RICO violation is incomprehensible.

common purpose," *id.* at 583, but financial gain is only one of many potential types of common purpose. Nothing in § 1961(4) suggests that a financial purpose is the only purpose that suffices for an associational enterprise.[9] *See, e.g., United States* v. *Ellison*, 793 F.2d 942 (8th Cir.), *cert. denied*, 479 U.S. 937 (1986) (white supremacist group as enterprise).

In sum, the definition of enterprise in Section 1961(4) unambiguously omits any requirement that an organization's conduct be motivated by a desire for economic gain. Even the Second Circuit, in commenting on its own ruling in *Ivic*, has recognized that "[s]ection 1961(4) appears to contemplate application of RICO to enterprises which, for example, are not themselves profit-making . . . . The situation reached by § 1962 may thus not always be one in which the enterprise 'makes money' for its members." *United States* v. *Bagaric*, 706 F.2d 42, 56 (2d Cir.), *cert. denied*, 464 U.S. 840 (1983).

3. Because Section 1961(4) itself provides no support for a requirement that the enterprise be driven by a primary purpose of economic gain, the opinion below—like *Ivic*—virtually ignores this express statutory definition. Instead, both of these opinions attempted to infer the

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[9] *Ivic* attempted to reconcile its economic motivation requirement with *Turkette* by claiming that while *Turkette* "held that the term 'enterprise' as used in RICO encompasses illegitimate organizations, nothing there suggests that it reaches every such organization, even one whose animating long-run purpose and predicate crimes are political rather than pecuniary." *Ivic*, 700 F.2d at 63. *Accord* 968 F.2d at 627. However, this statement simply ignores *Turkette*'s conclusion, based upon an analysis of the statutory definition of enterprise, that "[t]here is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." *Turkette*, 452 U.S. at 580. In short, *Turkette did* hold that every illegitimate organization qualifies as an enterprise, requiring only that the *existence* of an associational organization be demonstrated through proof of a common purpose, organization and continuity. *Id.* at 583.

meaning of "enterprise" as used in Section 1962(c) by examining the context in which the term is used in Sections 1962(a) or (b). *See Ivic*, 700 F.2d at 60-61; 968 F.2d at 627, 629. More specifically, they viewed Sections 1962(a) and (b) as implying an enterprise "in which funds can be invested and a property interest of some sort acquired, and hence the sort of entity which one joins to make money." *Ivic*, 700 F.2d at 60-61. They concluded that "enterprise" should be given "the same meaning" in subsection 1962(c). *Id.* This is the sole apparent basis for the court of appeals' holding "that this interpretation of § 1962(c) is dictated by the terms of the statute." 968 F.2d at 629.

This attempt to extrapolate a definition for the term enterprise as used in Section 1962(c) constitutes a wholly misguided exercise. The statute itself expressly supplies the relevant definition.

In any event, the premise of this argument—that the definition of enterprise must be modified within the context of Sections 1962(a) and (b)—is erroneous for at least three separate reasons. *First*, even if profit-seeking ventures were the only types of enterprises to which subsections (a) or (b) could be applied, this would not imply any alteration in or limitation of the statutory definition of "enterprise." "Language in a statute is not rendered superfluous merely because in some contexts that language may not be pertinent." *Turkette*, 452 U.S. at 583 n.5. Indeed, the court of appeals' argument on this point is strikingly similar to RICO-limiting arguments previously rejected by this Court.

For example, one of the arguments raised in support of the claim that "enterprise" should be limited to "legitimate organizations" was that various of the statutory remedies "would have utility only with respect to legitimate enterprises." *Id.* at 585. *See also Russello* v. *United States*, 464 U.S. 16, 24 (1984). But as this Court

recognized, "[e]ven if one or more of the civil remedies might be inapplicable to a particular illegitimate enterprise, this fact would not serve to limit the enterprise concept." *Turkette*, 452 U.S. at 585.

Second, and relatedly, to the extent that only certain types of enterprises are subject to Sections 1962(a) and (b), that is not because the definition of enterprise is altered as it applies in those sections. It is because those sections each impose additional unique requirements that are entirely absent from Section 1962(c). Thus, for example, it is the requirement of a use or investment of illegally derived income that potentially makes Section 1962(a) only applicable to certain enterprises. But that does not affect the core statutory definition of enterprise.

Third, the shorthand description of Sections 1962(a) and (b) that *Ivic* used to support its conclusion that "enterprise" in these sections refers to an "organized profit-seeking venture" is deeply flawed. *Ivic*, 700 F.2d at 60. These sections do not merely concern the investment of funds or the acquisition of interests in an enterprise. *Id.* Section 1962(a) also prohibits the use of certain funds to operate an enterprise—an activity which does not in any way require that the enterprise pursue profits. Similarly, Section 1962(b) prohibits the unlawful maintenance of control of an enterprise—again, not requiring a profit-seeking purpose. In short, the premise that Sections 1962(a) and (b) necessarily apply only to profit-seeking organizations is itself incorrect and ignores the statutory language.

B. RICO Does Not Impose Any Requirement That A Defendant's "Racketeering Activities" Be Economically Motivated.

1. Section 1961(1) of RICO states that "racketeering activity" "*means*" any act or threat that is unlawful under generically described state criminal laws or specified federal criminal provisions. 18 U.S.C. § 1961(1) (em-

phasis supplied). Other than enumerating the relevant federal statutes and state offenses, the statute provides no other restriction on the qualifying predicate acts. In particular, an "economic motivation" requirement cannot be found in, and is not added by, the definition of "racketeering activity." " '[R]acketeering activity' consists of no more and no less than commission of a predicate act." *Sedima,* 473 U.S. at 495. Because "racketeering activity" is expressly defined by reference to other statutes, proof of a racketeering act therefore requires only the same elements as would be necessary to be "chargeable," "indictable" or "punishable" under the underlying criminal statute. 18 U.S.C. § 1961(1). *See Northeast Women's Center, Inc.* v. *McMonagle,* 868 F.2d 1342, 1350 (3d Cir.), *cert. denied,* 493 U.S. 901 (1989).

Although some of these underlying criminal statutes may contain an economic element—for example, the federal statute relating to embezzlement or theft—others clearly do not. For example, Section 1961(1) includes as racketeering activity "*any* act or threat" involving murder, kidnapping or arson. 18 U.S.C. § 1961(1) (emphasis supplied). Indeed, the very line of Second Circuit decisions relied upon by the court of appeals here candidly concedes that:

> motive itself is not generally an element of a particular offense . . . . RICO demands no such inquiry. The offenses it proscribes are, in the main, activities punishable irrespective of motives for performance, and accordingly they are provable by showing mens rea in the typical fashion. *Hence, no additional scienter requirement is imposed by the statute.*

Bagaric, 706 F.2d at 53 (emphasis supplied).

Further, an economic motivation requirement is not necessary in order to distinguish acts of systematic illegality from legitimate forms of political expression. Vigilantes who take animals from medical research labora-

tories, harass and victimize health care providers, or otherwise engage in acts of lawlessness and mayhem deserve no special treatment by the courts simply because their crimes are motivated in part by their emotional commitment to a cause. *Cf. Wisconsin* v. *Mitchell*, 113 S. Ct. 2194, 2199 (1993). Neither the terrorists responsible for the bombing of the World Trade Center nor the zealots involved in the murder of Dr. David Gunn should be shielded from RICO prosecution by the ideological purpose underlying their crimes. Organized acts of criminality are among the core concerns of RICO, and RICO remedies should be available to redress them.

2. Because Section 1961(1) contains no "economic motivation" requirement, and the predicate acts at issue here derive from criminal statutes that contain no such element,[10] the court of appeals' insistence upon "economically motivated predicate acts" lacks any grounding in the statutory language. 968 F.2d at 629. In fact, the court of appeals did not even attempt to identify any statutory language that could be said to apply an additional "economic motivation" requirement to "racketeering activity."

Instead, the court of appeals justified its adoption of an economic motivation requirement for predicate acts solely on the basis that this would advance the same purposes served by its "economically motivated enterprise" requirement. Concomitantly, notwithstanding its conclusion that the terms of the statute require that a RICO enterprise be economically motivated, the court of appeals

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[10] The court of appeals here, agreeing with the Third Circuit's decision in *Northeast Women's Center*, 868 F.2d at 1349-50, acknowledged that the Hobbs Act, 18 U.S.C. § 1951—which punishes obstruction of interstate commerce through extortionate means, and is one of the statutory provisions enumerated in Section 1961(1)—does not require that the defendant profit economically. 968 F.2d at 629 n.17. Many of the predicate acts pleaded by petitioners in this case consisted of alleged acts of extortion in violation of the Hobbs Act.

adopted the view that this requirement need not be adhered to in all circumstances. Relying upon *Bagaric,* 706 F.2d at 56, the court held it permissible to "extend[] the economic motivation limitation by allowing economically motivated predicate acts to bring conduct within the scope of RICO." 968 F.2d at 629. The court did not require, however, that predicate acts always be "economically motivated." In those instances where the enterprise is economically motivated, the predicate acts need not be. Conversely, in those instances where the enterprise is not economically motivated, economic motivation for the predicate acts is required. *Id.* at 628-30.

Although these alternative formulations obviously provide some degree of flexibility in interpretation, they also reveal the incoherence of the court's statutory analysis. If economic motivation were in fact a statutorily required element for an "enterprise," then that element could not be required in some cases and ignored in others—at least absent some statutory basis for distinguishing between the two types of cases. No court has ever purported, however, to locate such distinguishing language in the statutory text. Similarly, a requirement of economic motivation for predicate acts cannot come and go as convenience dictates.

In short, the court of appeals' acceptance of alternative methods of proving economic motivation merely confirms that it is *neither* the enterprise nor the predicate acts of racketeering activity that require economic motivation. Simply put, this requirement lacks any textual basis in the Act.

3. The imposition of a free-floating "economic motivation" requirement, untethered to any statutory language, is precisely the kind of creative RICO-limiting interpretation that this Court has repeatedly condemned. This additional concept appears nowhere in the statute and affirmatively contradicts the intentionally broad statutory definitions. There is no more room for this concept than there has been for previously invented limitations such as "organized crime," "previous conviction," "multiple

scheme" or "racketeering injury." *H.J.*, 492 U.S. at 241, 249; *Sedima*, 473 U.S. at 488-89, 494-95.

In any event, an "economic motivation" requirement poses a multitude of definitional problems, particularly as applied to predicate acts. For example:

- Must every predicate act forming a "pattern" of racketeering activity be economically motivated? Or is it enough if only some are?
- If non-economically motivated predicate acts are permitted to be included within a pattern, should remedies be available pertaining to these acts—*e.g.*, civil actions by direct victims?
- Is motivation really the test? Or must the crime itself directly involve the receipt of money or other financial gain, thereby giving it "an economic dimension"? *Bagaric*, 706 F.2d at 53 n.11.
- If an "economic dimension" is the requirement, how does one make sense of the numerous predicate acts set forth in § 1961(1) that do not involve receipt of money? For example, if acts which themselves lack an "economic dimension" are undertaken for economic purposes—*e.g.*, a series of murders to serve as "examples" to one's business competitors—does that suffice? [11]
- If motivation is the test, must the economic motive be predominant? Or is a secondary economic purpose sufficient? Is there a distinction between short-term and long-term motives? [12]

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[11] *Cf. United States* v. *Ellison*, 793 F.2d 942, 950 (8th Cir. 1986) (finding RICO pattern established where predicate acts produced no direct financial benefit but bolstered morale and commitment of members of white supremacist organization and furthered intentions to punish nonconforming groups).

[12] "An interpretation of RICO requiring proof of long-term pecuniary objectives which in some sense can be said to supersede accompanying political or religious ones would invite a repetition of this conduct. It would authorize the admission of evidence of political beliefs, racial animosities, and family and blood feuds as justifications for criminal acts." *Bagaric*, 706 F.2d at 55.

These issues represent just some of the thorny problems raised by the court of appeals' economic motivation requirement. They reveal that this requirement, divorced as it is from the statutory text, is every bit as amorphous and difficult to define as the other non-statutory additions that have been rejected by this Court. *Sedima*, 473 U.S. at 494-95; *H.J.*, 492 U.S. at 229 n.3 & 249. As in those instances, "the difficulty of that task [of definition] itself cautions against imposing such a requirement." *Sedima*, 473 U.S. at 495.

C. RICO's Legislative History And Purposes Do Not Justify Inserting An Economic Motivation Requirement Into The Terms Of The Statute.

1. Because this is a case where the terms of the statute make plain its meaning, no examination of the legislative history is necessary. "Congress' 'inklings' are best determined by the statutory language that it chooses, and the language it chose here extends far beyond the limits drawn by the Court of Appeals." *Sedima*, 473 U.S. at 495 n.13. The statutory language is itself decisive.

In any event, nothing in the legislative history supports the view that RICO was intended not to apply to persistent, systematically organized criminal conduct undertaken with non-economic motives. To the contrary, at least one member of Congress opposed to the legislation appears to have specifically envisioned the possibility that it would be applied to politically motivated groups: "We must remember that henceforth the term 'racketeering activity' is given very broad definition and very well could extend to some of our labor unions *and very definitely to counterrevolutionary activities.*" 116 Cong. Rec. 35326 (1970) (remarks of Rep. Rarich).

Proponents of an "economic motive" requirement point to the fact that much of the impetus for RICO derived from a concern about organized crime's ability to procure illegal profits, particularly as a result of mob infiltration of legitimate businesses. *See, e.g., Ivic*, 700 F.2d at 61-

65. RICO, it was hoped, would take the profit out of organized crime. All of this is undeniable, but wholly inadequate to support the holding below.

A desire to cripple organized crime and strip it of its profits may have provided the immediate impetus for congressional action. But this fact does not create any negative implication about RICO's intended sweep. *Cf. Turkette*, 452 U.S. at 591. This Court has emphasized that RICO's intended scope should not be confused with the reasons for its passage.

> The occasion for Congress' action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute . . . .
>
> Congress drafted RICO broadly enough to encompass a wide range of criminal activity, taking many different forms and likely to attract a broad array of perpetrators operating in many different ways.

H.J., 492 U.S. at 249-50. *See also id.* at 245-46 ("Congress was quite capable of conceiving of 'pattern' as a flexible concept not dependent on tying predicates to the major objective of the law").

Regardless of whether it was specifically anticipated that RICO might be applied to terrorist organizations operating with ideological or political motives, what matters is that Congress acted deliberately in adopting a statute employing broad terms capable of such application. " '[T]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.' " *Sedima*, 473 U.S. at 499 (quoting *Haroco, Inc.* v. *American National Bank & Trust Co. of Chicago*, 747 F.2d 384, 398 (7th Cir. 1984)).

2. When it enacted RICO at Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 941, Congress provided an explicit declaration of its purposes that was no less broad than the statute

itself. In a preface to the Organized Crime Control Act of 1970, Congress first made certain "findings" regarding the perceived problems that had occasioned the need for the legislation.[13] 84 Stat. 922-23. It then proceeded to state the purpose of the legislation. That purpose was "to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime." 84 Stat. 923. In sum, RICO's purposes were "to supplement old remedies and develop new methods for fighting crime." *Sedima*, 473 U.S. at 498.

RICO remedies are necessary to combat the disturbing trend of vigilantism and violence against medical practitioners and researchers. During the last eight years, over a dozen health care workers or researchers have been murdered on the job.[14] There have been more than 100 incidents of vandalism, arson or theft by animal rights activists.[15] In many cases, these criminal acts have been performed by, or with the assistance of, well-funded and tightly organized enterprises formed for the very purpose of engaging in medical vigilantism.

An "economic motive" requirement would artifically place whole areas of organized criminal activity beyond

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[13] These findings focused in large measure on the deleterious *effects* of organized crime, not on the criminals' motivations. Moreover, the findings referred not only to the harmful economic effects of these criminal activities ("weaken the stability of the Nation's economic system, harm innocent investors and competing organizations . . . serious burden on interstate and foreign commerce") but also to their harmful effects on safety and welfare ("threaten the domestic security, and undermine the general welfare of the Nation and its citizens"). 84 Stat. 922-23. In short, the kinds of harmful effects that concerned Congress certainly are broad enough to include the effects of the organized criminal activity alleged by petitioners here.

[14] J. Adams, "After Second Bombing, FBI Warns Academics," *Chicago Tribune* (June 25, 1993), at 2.

[15] *Id.*

the reach of RICO. Such a result is inconsistent with the statute's language and purposes. As Justice Stevens has pointed out, political terrorism merits no special solicitude. *United States* v. *Cullen*, 454 F.2d 386, 392 (7th Cir. 1971) ("Appellant's professed unselfish motivation, rather than a justification, actually identifies a form of arrogance which organized society cannot tolerate"). And the devastating impact that such criminal acts have on medical practice and research cannot be condoned simply because the acts are committed in the name of some supposedly higher justification.

CONCLUSION

For the reasons stated above, the judgment of the court of appeals should be reversed.

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